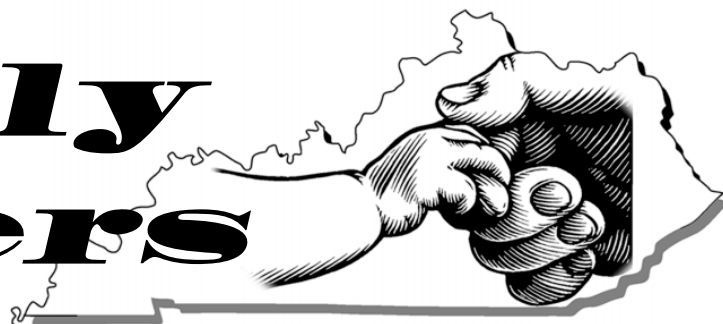


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# Family Matters



Quarterly News and Information about Family Court

April 1999

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## Moving Towards Our Goals

### Letter from the Coordinator

Having traveled to many of the Kentucky Bar Association District Bar meetings, it seems time for a newsletter issue with a focus on answering frequently asked questions about family court and the Commonwealth of Kentucky's model for family court.

### *What are the qualifications necessary to be a Family Court judge?*

The provisions of Kentucky Constitution §122 outline the eligibility of the judiciary. In order to be a judge of the circuit court, a person must have been a licensed attorney for at least eight years, and in order to be a judge of the district court, a person must have

been a licensed attorney for at least two years. The family court hears a combined jurisdiction which incorporates both circuit and district jurisdiction. Whether appointed or elected, a family court judge must have been a licensed attorney for at least eight years in order to hear cases which have underlying circuit jurisdiction. This premise has been followed in Jefferson Family Court wherein district judges who have rotated into the family court project have practiced law a minimum of eight years, in order to have the requisite eligibility to be sworn by the Chief Justice of the Supreme Court as Special Circuit Judges.

### *Where do appeals from Family Court projects go?*

This process has been articulated in local court rules and is determined by the "underling" jurisdiction of the case. In family court matters over which circuit court would otherwise have jurisdiction, any appeal proceeds by the Rules of Civil Procedure to the Court of Appeals, except that all appeals from domestic violence or emergency protective orders

proceed to circuit court. Conversely, in domestic violence cases and other family court matters over which district court would otherwise have jurisdiction, any appeal proceeds to the circuit court.

### *What role does the Family Court Council play in the development and structure of the family court project?*

The creation of a Family Court Council is mandated by KRS 23A. The council must be multidisciplinary in nature. The family court council is comprised of members of the community directly impacted by the work of family court, as appointed by the chief judge of the family court. Probable members include circuit court clerks, county attorneys, commonwealth attorneys, public defenders, directors or regional directors of social service agencies, sheriffs, local law enforcement, representative members of the bar, and other community members, to name a few. This council is directed by statute to assist in the development of local rules of

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practice, to serve in an advisory capacity to the court, to recommend action, to evaluate the impact the court has on the children and families of the community, to support program development, and to suggest change. The family court council can be an invaluable asset in continuously reassessing the mission and vision of the family court pilot projects.

### ***How are Family Court judges chosen?***

The adoption of House Bill 544 created several new judgeships around the commonwealth, with many specifically for family court sites. Attorneys can apply for these positions as they are posted. Applications are reviewed by local nominating commissions pursuant to SCR6.00 through SCR6.060. Following a meeting of the Judicial Nominating Commission, the Chief Justice of the Supreme Court submits the names of three nominees to the governor by letter. The governor has sixty days in which to appoint a judge from the list of three nominees. If the governor chooses not to appoint, the Chief Justice of the Ky. Supreme Court may make the appointment. Kentucky Constitution §118. Newly appointed judges must file in the next scheduled election if they desire to retain their seat. Anyone meeting the eligibility requirements may file against them.

Continue reading for more information about family court in the commonwealth. Several

highlights of this letter include articles articulating the social service components of an integrated family court, the unique facility structures which can impact court process, updates from our three newest courts, and the law on grandparent visitation. I want to thank the authors for their contributions and their assistance in helping us develop this useful tool. Keep those articles coming.

*Carla Kreitman*  
*State Family Court Coordinator*

## **FAMILY COURT SITE UPDATE:**

### **BOONE/GALLATIN FAMILY COURT.....**

*Kimberely J. Adams*  
*Family Court Administrator*

The transition of cases from circuit court and district court to the Boone/Gallatin Family Court has been running smoothly. Between October 14, 1998, and December 11, 1998, Family Court Judge Linda Rae Bramlage heard 4 adoptions; 34 dependency/abuse/neglect matters; 166 domestic matters; 118 domestic violence cases; 100 paternity cases; and 41 status offenses. Dockets have been running very well, necessitating only minor deviations from the court's original schedule.

Judge Bramlage's juvenile docket has proven the most challenging. Minor difficulties in the flow of the juvenile docket are being addressed. Effective January

6, 1999, the Boone County juvenile docket relocated to the larger district courtroom in order to better accommodate the number of people involved in juvenile court.

The Boone/Gallatin Family Court has not heard juvenile public offenses. The question as to whether this policy best serves the families of Boone and Gallatin Counties was raised at a recent advisory council meeting. In an attempt to address this issue, the family court, along with the Boone/Gallatin District Court, has issued a joint order whereby the district court retains jurisdiction over juvenile public offenses, unless the district court determines from a review of the record and history that the matter would be better suited for family court. In those instances, the district court will refer the case to family court. This is effective for juvenile matters filed on or after January 15, 1999.

The advisory council meets on the second Thursday of the month. All subcommittees have been meeting regularly, and each subcommittee chairperson gives a progress report to the advisory council at its meetings. Most subcommittees are in the process of formulating local rules of practice for their particular areas.

Judge Bramlage has mandated a divorce education program for all actions for dissolution of marriage filed on or after January 1, 1999, which involve minor children. Both parties must attend the divorce education program. If the children are between the ages of 5 and 16,

the children must also attend the program. Parties filing for divorce are given an information packet by the circuit clerk's office, which includes a general order, a general information sheet, and a sheet listing the names and telephone numbers of program facilitators. An information packet is also attached to the respondent's summons.

The program being utilized is the Families in Transition (FIT) program, which was developed by Joe H. Brown, Ph.D., with the University of Louisville. The FIT program has been in place with the Jefferson Family Court since 1992. Dr. Brown conducted a training session for program facilitators in mid-January.

Parties are responsible for contacting the facilitator of their choice in order to obtain scheduling and registration information. The \$50.00 per parent fee is paid directly to the facilitator. Parties must complete the program with the same facilitator with whom they start the program. The parties must complete the program within 90 days after the Petition for Dissolution of Marriage is filed. A Certificate of Completion must be filed with the Court before a Decree of Dissolution will be entered.

## **PIKE COUNTY.....**

*Glenda Lyons*  
*Family Court Administrator*

The Pike Family Court and the Pike County Board of Education are discussing a partnering relationship, joining together to draft a grant application, the focus

of which is beginning an Even Start program. This grant contains a literacy educational component for adults and children from 0-7 years of age. The family court hopes to utilize center-based visitation as a component of the court. The visitation centers provide a non-threatening environment for parents and children to spend time together thereby strengthening the family unit. The proposal is currently in the discussion/draft stage, and initial grant drafts have been submitted to the Administrative Office of the Courts for review.

Another collaboration with the school system will be the implementation of three truancy prevention courts. The truancy prevention court is modeled after the program used in Jefferson County. The first truancy prevention court began February 12, 1999, at Pike County Central High School. Shelby Valley High School and Belfry High School are also participating in the program.. Truancy prevention court is designed to discourage truancy behavior in students that will lead to filing of habitual truant charges. Judge Burke and staff will visit these schools and speak with the students who are on the verge of having legal charges filed. The judge will explain the court's process if truancy charges are filed. Together the court and the school system will work towards identifying the reason why the students are absent and develop a process to help increase school attendance.

Judge Burke and staff are also considering two referral programs

for families and children involved in a domestic action, Families in Transition (FIT) and Stress Evaluation and Prevention Program for Children of Divorce (STEPP). The purpose of the programs is to identify and provide services for families and children who are involved in a domestic action.

Family court sponsored a poster contest for fifth and sixth grade students in the county school system. With the assistance of the Family Resource/Youth Service Centers, an invitation was given to the students. Many students participated in the contest. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> place winners were chosen and announced on December 18, 1998. The winning posters will be on display at family court for one year. The schools also recognized the winners. Judge Burke plans to make this as an annual event.

The opening date for the children's waiting area was February 12, 1999. With the wonderful assistance of community volunteers, the waiting area will provide a place where children can wait while their parents are in family court hearings. The area has been inspected by the Deputy Fire Marshall. Community volunteers, who meet similar eligibility requirements of daycare workers, will be trained to staff the waiting area and provide supervision for the children. The waiting area has games, toys, and books for the children and is designed to provide a sanctuary for the children who are required to come to the courthouse.

## **WARREN COUNTY.....**

*Connie DeVries  
Family Court Administrator*

Warren Family Court began hearing cases on October 26, 1998, and has experienced a steady increase in case load to date. Reaction from both public and private sectors has been very positive.

On November 5, 1998, the first monthly family court council meeting was held, with approximately 75 people in attendance. After a brief introduction by Judge Margaret Ryan Huddleston, participants were encouraged to become actively involved by serving as a member on one or more of the 17 subcommittees created to function in an advisory capacity. These subcommittees meet regularly and report back to the family court council on a quarterly basis. The family court staff is available as needed or requested to offer support, such as, legal research, secretarial assistance, or acting as a liaison between the subcommittee and the judge.

Warren Family Court celebrated the holidays with a holiday open house on December 17, 1998. It provided the opportunity to "show case" ourselves to both private and public sectors. While it required a great deal of creativity and ingenuity to get our "temporary" office space ready for the occasion, we proved to ourselves that it really is possible to push to the limit and beyond.

As the new year gets underway, we eagerly face the

challenges presented daily in all facets of family court in Warren County.

## **FRANKLIN COUNTY COURT COUNCIL .....**

*Jennifer VanHoose  
Family Court, AOC*

The Franklin Family Court Council convened its second meeting on January 22, 1999, at Franklin County Courthouse. The subject of the meeting was the schematic design of the new Franklin County facility. Consultants from the architectural firm CMW outlined the new facility plans and addressed questions and concerns of the council members.

The Franklin Family Court Council presently is chaired by Circuit Judge Roger Crittenden. Judge Crittenden has worked to ensure that the council is representative of the community in which the family court will operate.

The council is comprised of local officials such as the district and circuit judges, circuit clerks, friend of the court, county attorney, county judge executive, and sheriff. The council also includes counselors, school representatives, social workers, and attorneys.

The Franklin Family Court is especially proud to have Kentucky's First Lady, Judi Patton, on the council. First Lady Patton was in attendance at the meeting and raised concerns regarding the issue of a juvenile holding facility and the children's waiting area. These issues are fundamental to the family court and the philosophy

that supports it. The new facility will include a children's waiting room with an observation area. There will be adequate space to separate the juveniles from the adults that are detained and waiting for a court hearing. The plans will be finalized within the next month. The Franklin Family Court Council will have the opportunity to view and approve the final plans for the new facility.

## **FAMILY COURT EMPLOYEES:**

### **ADMINISTRATIVE OFFICE OF THE COURTS:**

We would like to welcome **Joana Santamore** (Joe) as the Family Court Specialist here at the AOC. Joe earned a degree in public administration and economics from Meredith College in June 1994. She received her law degree from the University of Louisville in December 1997. Joe is familiar with the family court system. Before she came to the AOC, she worked as a staff attorney for Jefferson Family Court.

### **BOONE/GALLATIN:**

Effective January 4, 1999, **Cassandra Schmidt**, staff attorney, left the Boone/Gallatin Family Court to take a position as staff attorney with Judge Daniel T. Guidugli of the Kentucky Court of Appeals.

On December 28, 1998, **J. Anthony Lovensheimer** joined the Boone/Gallatin Family Court

as its new staff attorney. Tony is a 1997 graduate of Cincinnati College of Law. He received a bachelor of arts degree in English and in foreign affairs from the University of Virginia in 1993. Prior to joining the family court, Tony taught French at Holmes High School in Covington. He served as local counsel for Indianapolis Collections Limited, and he also worked with the Warren County (Ohio) Prosecutor's Office and Adams,

Brooking, Stepner, Woltermann, and Dusing, law firm in Covington.

Judicial secretary **Brenda Trimble** will leave Boone/Gallatin Family Court in February 1999 to take a secretarial position with Bogucki, Knoebel & Vice, a local law firm with offices in Florence, Augusta and Maysville.

On February 1, 1999, **Melissa Elam (Missy)** joined the Boone/Gallatin Family Court as judicial secretary. Melissa earned a

bachelor of arts degree in paralegal studies from Morehead State University in 1997 and spent two years as an intern and then a deputy clerk with the Boone Circuit Clerk's office. She served as one of Judge Bramlage's bench clerks immediately prior to joining the court as judicial secretary. Her knowledge of the court system and familiarity with family court cases should make her transition easy and will be most beneficial to the court.

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### **Upcoming Newsletter Topics**

**Improving Guardian Ad Litem  
Program Development....  
Upcoming Family Courts....**

# **FAMILY COURT: THE IMPACT ON A COMMUNITY**

*Written by: Teresa Christmas  
Support Worker/Warren County*

As someone who has worked to serve families for over a decade, I can see how many more resources exist today in my community than existed twelve or thirteen years ago. Since I began working for the family court as a support worker in October, I have seen many changes taking place in the systems that serve families and children. These changes are very good. In Bowling Green, Kentucky, the Warren Family Court and Judge Margaret Ryan Huddleston are making an impact on the community.

During the last six years, forty-seven states and the District of Columbia have participated in a federally funded court improvement program designed to give states the opportunity to look closely at how well their court systems are serving abused and neglected children. The fundamental goal of the project is to place children in safe, permanent homes as quickly as possible through systemic court reform. Most states have completed their assessments and are well into the second phase of the program - implementing the reforms recommended by their advisory committees.

Issues addressed during these assessments have included timeliness and quality of hearings, legal representation, judicial leadership, attorney and judicial education and training, treatment of parties and witnesses, timeliness of court decisions, accountability, management information and case tracking systems, appellate delays, and the involvement of citizen and community groups in the court improvement process. The focus is on children.

I recently attended the National Child Abuse and Neglect Conference in Cincinnati. While there, I attended workshops that dealt with the national court reform. As someone with a background in child development and early childhood education, I cannot describe how happy I felt to find that the rest of the world, the courts included, have finally taken notice of a tiny piece of information about child development. That little piece of information is simply that children not only have a different sense of time than adults (for a child, six months might as well be forever), but children also change and grow much more rapidly during the early years than at any other time in their lives. This is the time when children acquire language, a variety of cognitive skills, and most importantly, this is the time when children bond with their primary care givers and begin to form a sense of personal identity. In early studies, Piaget gave us his theories of developmental stages and Erikson outlined his theories of the "stages of man" (Trust vs. Mistrust). In more recent years, the Carnegie Foundation published new research on brain development which states in very simple terms "the first years last forever."

Past practices of leaving young children in legal limbo for protracted amounts of time, while custody or placement is decided, are no longer acceptable. In response to this old problem that has been newly discovered, congress has passed a law requiring that courts assess their responsiveness to the needs of children and take action to streamline their processes to meet those needs. Particularly when dealing with a child under the age of six, we must speed up the process.

According to the Carnegie Report, "the outside world shapes the brain's wiring and relationships with other people early in life and are the major source of development of the emotional and social parts of the brain."<sup>1</sup> Megan Gunnar, Ph. D., from the University of Minnesota has shown that by the end of the first year, children who have received consistent, warm, and responsive care produce less of the stress hormone cortisol, and when they do become upset, they turn off their stress reaction more quickly. This suggests that they are better equipped to respond to life's challenges.<sup>2</sup>

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<sup>1</sup>Shore, Rima. 1997, *Rethinking the Brain*. New York; Families and Work Institute.

<sup>2</sup>The First Years Last Forever, *I Am Your Child*, The New Brain Research, (brochure) New York, Families and Work Institute, Ad Council.

Bruce Perry, M.D., Ph. D., and his colleagues at Baylor College of Medicine have shown that infants and young children exposed to abuse and neglect are more likely to produce a strong stress response, even when exposed to minimal stress.<sup>3</sup>

The Carnegie Report set off a reaction across the nation. In 1997, influential people, such as producer Rob Reiner and many other famous parents, armed with the information that the first years of life effect a child's entire life, produced an ABC Special entitled "I Am Your Child." Newsweek also published a special edition sharing the new research with the general public. This lead to a national campaign which is still going strong. The national "I Am Your Child Campaign" can be found on the Internet (<http://www.iamyourchild.org>) and has been influential and effective in bringing communities together in an effort to target those issues which impact young children. Across the nation, communities are mobilizing to make their neighborhoods better places for children and families. The campaign is bringing about an awareness of the issues that families face every day. People are realizing that an investment in our children's early years will pay huge dividends to our society. Evidence of the effect of the campaign can be seen in the fact that quality and affordable child care has found itself at the top of the nation's political agenda. The Dead-Beat Parent Act was passed in an effort to enforce child support. Local communities have begun to work together in the development of new resources and partnerships for the prevention of child abuse.

This campaign comes none too soon, as children in our society have been facing a crisis. In the 1994 report entitled *Starting Points*, the Carnegie Task Force on MEETING THE NEEDS OF OUR YOUNGEST CHILDREN described the quiet crisis that faces infants and toddlers and their families. *Starting Points* reported that "of the 12 million children under the age of three in the United States today, a staggering number are affected by one or more risk factors that make a healthy development more difficult. The incidence of child abuse and neglect has increased dramatically over the last decade. The number rose from 1.4 million in 1986 to more than 2.8 million in 1993. (This is an estimate of actual cases of abuse and neglect, not just reported cases.)"<sup>4</sup>

Community involvement and court systems were not always linked together, but a family court deals with family issues which often result in referrals for treatment. Geraldine Dawson, Ph.D., and her colleagues at the University of Washington have found that mothers who are significantly depressed throughout their children's first year are less likely to respond sensitively to their children's cues and clues. This can have long lasting effects on their babies' development. On the other hand, the good news is that when mothers get help and the depression lets up, the impact on the children also lessens or goes away altogether. Treatment can help both parents and children. It takes an entire community of professionals to consider what are the best options available for some families.

In Kentucky, Governor Patton has shown his support by forming a new advisory council on early childhood issues. In addition to the council more family courts are being implemented across the state. Recently, family courts began in Pike, Warren, and Boone/Gallatin Counties and have looked to Jefferson County for training and resources. The Jefferson Family Court has been existence since 1990 and, under the leadership of Judge FitzGerald, has become a model for the nation. Other agencies in the community are working in partnership with the Warren Family Court. In addition to the city's Domestic Violence Council, there are some very exciting and innovative parent training programs. One very new project is CASA (Court Appointed Special Advocates). In the self assessment that courts did nation-wide, one of the top priority issues addressed was implementing CASA programs. In Bowling Green, CASA, funded in part by United Way, has recruited volunteers from the community who will be assigned to track children in the court and child protective systems. These people are authorized to review documents in a case and to communicate

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<sup>3</sup>The First Years Last Forever, *I Am Your Child*, The New Brain Research, (brochure)

<sup>4</sup>Shore, Rima. 1997 *Rethinking the Brain*. New York: Families and Work Institute, p. 12

to case workers, supervisors, foster parents, family members, and all those people who play a role in the child's life, but more importantly, they observe and they talk with the child.

Another exciting, new project in Warren County is the Child Advocacy Center. Until now, children who needed medical exams or were seeking treatment in sexual abuse cases had to travel hours away to Louisville or Nashville. The new Barren River Child Advocacy Center, scheduled to open this summer, will serve the region by providing counseling, therapy, on-site interviewing, and medical exams for abused children. The new center will aid child abuse victims by reducing the stress and trauma children often experience when they seek protection through the court system and the child protection system. Children will be videotaped to aid investigating and prosecuting their cases.

Bowling Green has a wealth of professionals and child advocates who offer treatment, parent education, and other services to families. Both these individuals and the agencies that they represent are coming together in many ways to form new and exciting partnerships. Through team work, their efforts are much enhanced. Families are served more quickly and effectively. A team effort in the prevention of child abuse is taking place in our community. Having just attended a national conference and hearing about programs and projects taking place in other parts of the country, I am both excited and gratified as a social worker to be a part of a community that is doing so much. It is happening nationally. It is happening locally. A change is taking place. Perhaps, we are finally becoming a society which really values its children. It is one thing to say, "It takes a village." In Bowling Green, it is more than just a proverb; the "village" is taking action.

## **THE FAMILY COURT FACILITY**

*Written by: Jennifer VanHoose*

*AOC Family Court*

*"Courthouses should be welcoming, not intimidating, places for the public to visit. They should also be pleasant and comfortable places for judges, their staff, and other employees to work."*<sup>1</sup>

David Hobstetter

Key elements to a successful family court include highly trained and experienced judges and family court staff, successful programs for families, community support, and court rules that support the family court philosophy. In discussions regarding family court, it is easy to become lost in the debate over whether the elements of the family court structure offer a more effective method of conducting business. Yet it is imperative to start from the beginning and consider the physical structure that will embody the court and the philosophies that the family courts are built upon. A family court facility plays as much of a key role in the success of family court as the well placed program and the highly trained judge.

When designing a court facility, there are a multitude of decisions to consider. Location, security, technology, court room comfort, compliance with ADA requirements, placement of restrooms, and office space are just a few considerations. These are decisions that cannot be made quickly nor should they be made by one or two people. The consultations associated with these decisions should involve as many of the daily courthouse personnel as possible.

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<sup>1</sup>Hobstetter, David. "Value Design: A Strategy for Building Courthouses." Court Review (pp. 14-18) 1994.



According to David Hobstetter, “A courthouse shelters a family of related functions, each with different needs, problems, and options.”<sup>2</sup> Therefore it is imperative to involve as many of the courthouse consumers as possible in the organization of the courthouse. Architects should work with judges, other court officials and staff, sheriff, probation department, district attorney, public defender, and attorneys.<sup>3</sup> The more input the architects receive from individuals who use the court, the more user-friendly the new facility is likely to be.<sup>4</sup> In keeping with the family court philosophy of making the court experience a less stressful and more productive venture, it is also critical to consider the clients during the designing process. Is there adequate space for comfortable waiting rooms? Are there separate waiting rooms for domestic violence perpetrators and victims? Has consideration been given to the children that visit the courthouse?

The 1998 ABA Summit on Unified Family Courts found that “[F]or almost all children going to court is a frightening experience which occurs at a time of family crisis already fraught with anxiety. Courthouse corridors and even courtrooms are full of children; they accompany adults who need to be there and have no other place to leave their children, or they are there because they themselves need to appear in court.”<sup>5</sup> The ABA recommended, that “[C]ourts should provide friendly environments, including trained staff, for children who are waiting to testify in court cases, child victims who are attending hearings and other court proceedings, and children who have merely accompanied their parents to court because there was no one to look after them. Friendly environments and trained staff can provide a safe, nurturing alternative to the tension, conflict and verbal violence that often characterize courtrooms.”<sup>6</sup>

The family courts of Kentucky take the well-being of visiting children very seriously. For example, Pike Family Court has set up a separate waiting room full of donated toys and books for children that must attend court with their parents and/or guardians. The children’s waiting room is a place where children can be comfortable during what is often a very stressful and anxiety filled time for families.

The Warren Family Court has also taken children visiting the court under serious study while developing their new court facility. According to Jim Gildersleeve, Warren Court Administrator, the waiting areas in the new Warren County Courthouse set the family court apart from the other nine court divisions. The family court will have two adult waiting areas to accommodate separation of violent perpetrators and victims, in addition to a separate children’s waiting area.

The children’s room will be “state of the art” with a detached observation area. The observation area will include a one-way glass window installed to accommodate supervised visitation. There is also a children’s restroom so that children will remain separated from the adult population and the stress of adult situations at all times. “You don’t want to mix children with perpetrators in court. It doesn’t do any good to separate children in their own waiting room and then have to walk them through the adult waiting areas where alleged perpetrators are waiting for court,” says Mr. Gildersleeve.

Several structural features should be taken into consideration while designing a family court facility. Adequate waiting room space is needed to separate parties under stress, and perpetrators from their victims. Private rooms for attorneys to meet with their clients are needed for confidentiality purposes. Finally, the facility should be designed for expansion so that it will accommodate the increasing demand for legal services by families.

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<sup>2</sup>Hobstetter, David. “Value Design: A Strategy for Building Courthouses.” Court Review (pp. 14-18) 1994.

<sup>3</sup>Id.

<sup>4</sup>Osterud, S. and Kasperek, Dale. “Planning New or Redesigned Court Facilities.” The Court Manager (pp.41-46). 1995.

<sup>5</sup>American Bar Association. “The Recommended Agenda for Families in the Courts.” ABA Summit on Unified Family Courts: Exploring Solutions for Families, Women, and Children in Crisis (pp. 53-58) 1998.

<sup>6</sup>Id.

The examples mentioned above are best-case-scenarios when designing a facility to house family court. The issues should be studied and considered carefully. However, due to budgetary limitations and lack of existing space, it is often difficult to attain these goals in designing a facility. Courts must often be inventive and recycle space. Examples of this could include: office space doubling as a staff office and an attorney client meeting room when needed; keeping coloring books and toys in the general waiting area when space is lacking for a children's waiting room; or reserving a seat in another room for a victim to use when a perpetrator is present in court. Though a court may not have adequate space, accommodations can be made in order to support the family court philosophy of reducing stress and making the court experience as comfortable and productive as possible for families of the commonwealth.

## **THE TRUTH ABOUT TRAINING**

The Administrative Office of the Courts is fortunate to house an extremely proactive and responsive Division of Education Services which provides on-going, continuing education opportunities for the judiciary, clerks, and staff of the courts. For judges newly appointed, there are bench books, desk books, orientation courses, mentoring opportunities, basic courses and continuing education/graduate type courses available to help. Since judges reach the bench by election or appointment in Kentucky, it is conceivable that a person might be a practicing litigator one day and a judge the next. Having training available is not only valuable for the judge, but valuable for the public. Training enables the judge to handle more quickly the mass and complexity of litigation to be heard and with fewer errors.

The Department of Family Courts is working with Education Services to provide training relevant to the development of the new courts. In order to effectuate a positive transition for newly appointed family court judges and staff, emphasis has been placed on providing as many education and training opportunities as possible. The next district judges college will focus on juvenile issues, many of which are included in the family court jurisdiction. This college will take place in May 1999. Consideration is being given to developing a "family court track" at the circuit judges college, focusing on domestic relations, family, and juvenile issues. The next circuit judges college is slated for January 2000. The AOC staff is also developing a program for the staff of the different family courts to enable them to come together and to learn from each other and share ideas.

In addition to education on substantive law, the family court judges and their staff will receive training on topics relevant to family court practice. A few of the topics considered relevant to family court practice include alternative dispute resolution and mediation in family court, program development, divorce education, case management, domestic violence, and child development. Cross-training between disciplines helps in the work of family court where court-community collaborations are important.

Training tools which already exist include bench books developed for the circuit and district judges as well as a domestic relations bench book. These tools are in the process of being updated with current law and practice under the direction of Michael Pack. The Department of Family Court is in the process of combining family court jurisdiction (portions of which overlap the circuit and district court bench) into a comprehensive "Family Court Bench Book" with a target completion date of August 1999. It is a goal of the future to provide these resources on CD-ROM to the judiciary to enhance their usefulness.

## THE LAW ON.... GRANDPARENT VISITATION

*Written by: Mary Jo Gleason and Joni Brown  
Staff Attorneys Jefferson County*

Since the mid-seventies, grandparents in Kentucky have had a statutory right to visitation with their grandchildren. Prior to the enactment of the statute, grandparents had no legal rights to visitation with their grandchildren. The common law did not grant such a right. Now, however, all fifty states have some form of grandparent visitation.

The Kentucky provision, enacted in 1976 and revised in 1984 and 1996, is contained in KRS 405.021. Giving jurisdictional preference to circuit court, it provides that the court **may grant reasonable** visitation rights to either the paternal or maternal grandparents of the child. The court may issue any necessary orders to enforce if the court determines that doing so would be in the best interest of the child. Once these rights have been granted, they are not adversely affected by the termination of parental rights unless the court determines that doing so would be in the best interest of the child to do so. Furthermore, the court may also grant non-custodial parental visitation rights to the grandparent if the parent is deceased **and** the grandparent has assumed the financial obligation (child support) for the child. However, if visitation is not granted under these circumstances, the grandparent shall not be responsible for child support. The venue for this action is the county of the child's residence.

The earliest version of the statute, enacted in 1976, granted grandparents whose child was deceased legal standing to seek visitation with their grandchildren. The 1984 revision of the statute allowed grandparent visitation even when the parent or parents were not dead (as in divorce proceedings) if it serves the **best interest of the child**. Protection of the visitation rights of grandparents was not extended when the parents' rights were terminated or the child was adopted, unless the adoption was by a step-parent.

In 1996, the statute was revised. Previously the termination of parental rights served to terminate the right of the grandparents claiming through that parent. The amended statute allows grandparents to seek continuation of visitation with their grandchildren even after termination of parental rights occurred. However, the language of the statute is specific to the exercise of this right. Grandparent visitation must have already been established prior to the termination of parental rights. In Dotson v. Rowe, 957 S.W.2d 269 (Ky. App. 1997), the parents were divorced in 1991 with custody awarded to the father. The maternal grandparents petitioned and received visitation rights with their grandchildren in 1994. The court held that if a strong relationship already existed between the grandparents and the child, public policy dictated that grandparent visitation not cease. Otherwise, the grandparents would be unintended victims of the termination of parental rights. Importantly, the court had the ability to determine that such visitation is in the best interest of the child. Moreover, this remedial provision is applicable to cases prior to July 1996 as well as those after the effective date of the amendment. Peabody Coal C. v. Gosset, 819 S.W.2d 33,36 (Ky. 1991).

A strict statutory interpretation has followed the provision. An example of this strict construction can be found in Cole v. Thomas, 735 S.W.2d 333 (Ky. App. 1987). The court refused to extend the right to seek visitation to great-grandparents. Holding that visitation set by the court is a limitation on exclusive custody awarded to a party, the court stated that "for the most part . . . the total custody, care and upbringing of a child must remain with the parent."

The legislative intent of this statute was to strengthen familial bonds. As the Court observed in Hicks v. Enlow, 764 S. W.2d 68,70 (Ky. 1989):

The grandparents' visitation statute was an appropriate response to the change in the demographics of domestic relations, mirrored by the dramatic increase in the divorce rate and in the number of

children born to unmarried parents, and the increasing independence and alienation within the extended family inherent in a mobile society.

With the dramatic changes taking place in society, the legislature wanted to prevent a petty, family quarrel from depriving a child of the love and affection implicit in intergenerational contact.

Significantly, the statute has also withstood a constitutional challenge. Grounded in the public policy of the importance of preserving intergenerational family ties for the benefit of the child, the court in King v. King, 828 S.W.2d 630 (Ky. 1992), held that KRS 405.021 is constitutional.

The respondents in that case argued that the statute constituted an unwarranted intrusion into the right of parents to rear their children. While the Constitution does recognize the right, it is not absolute. Parents are required by law to educate their children. Parents cannot abuse or neglect children. Citing the historically strict interpretation of the statute by the courts, its specific requirements and the importance of the relationship with the grandparent for the child, the court explained that this statute seeks to balance the fundamental rights of parents, grandparents and the child. *Id.* at 632.

Another interesting case concerning grandparent visitation decided in the last year is Posey v. Powell, 965 S.W.2d 836 (Ky. App. 1998). The Poseys appealed a judgment which had dismissed their petition for custody and their motion for grandparent visitation with their grandson because the trial court had found they did not have standing. Their lack of standing was based on their grandson's out-of-wedlock status. The domestic relations commissioner (the commissioner) had found that jurisdiction existed and that it would be in the best interest of the child for visitation to be established. The trial court, after exceptions to the commissioner's recommendation were filed by the child's mother, decided that because paternity had not been established pursuant to KRS 406 et seq., the Poseys had no legal relationship with the child. Therefore, they could not petition for custody or visitation.

The issue presented by the grandparents in this case is whether putative grandparents have standing to pursue reasonable visitation under KRS 405.021 or custody under KRS Chapter 403. The Court of Appeals decided that the statute extends to all grandparents regardless of whether the grandchild is born in or out of wedlock and regardless of whether a judgment of paternity has been entered by the court.

Nowhere in the statute is there a requirement that the biological grandparents must seek a judgement of paternity when a child has been born outside of marriage. It would be ludicrous to assume that the legislature would allow unmarried parents of children, to frustrate the intent of the legislature. Grandparents with reliable evidence as to the biological relationship between them and a child, may establish their entitlement to visitation or custody rights. Here the biological relationship between the child and his grandparents had never been in doubt. The child's mother acknowledged that the grandparents' son was the father. Further, the name of the grandparent's son was listed as the father on the birth certificate. Thus, standing was not an issue and the denial of the motion for visitation was in error.

After the court determines that the grandparents have standing to establish visitation, the court must evaluate whether visitation between the grandparents and the child is in the best interest of the child. A review of the statutory framework and case history shows this analysis does not concern itself with the best interests of the adults involved in the conflict but is significantly concerned only with the best interest of the child. The custodial parent's objection to visitation cannot alone deny the grandparent visitation. Most likely, this statute will only be used when parents object to visitation between grandparents and grandchildren; otherwise, the statute is superfluous. According to Baker v. Perkins, 774 S.W.2d 68 (Ky. App. 1989), the condition between the adults are only part of the analysis and are not the only issues to be deliberated. Although hostility and conflict between the adults are, indeed, issues to be weighed in the risk/benefit analysis of the best interest of the child, they are not necessarily primary and certainly not the only issues. Some other factors to be taken into account include, but are not limited to, the nature of the relationship between the child and grandparents, the preferences of the child, and mental and physical health of the parties involved. The circuit court must determine whether the child would benefit from visitation rights which can be described as complex, but in reality they are based on a rather simple but

profound notion. The more people that children have in their lives to love them, the better their lives are. The importance and beauty of a relationship between grandparent and grandchild are eloquently stated in King, supra:

**If a grandparent is physically, mentally and morally fit, then a grandchild will ordinarily benefit from contact with the grandparent. That grandparents and grandchildren normally have a special bond cannot be denied. Each benefits from contact with the other. The child can learn respect, a sense of responsibility and love. The grandparent can be invigorated by exposure to youth, gain an insight into our changing society and can avoid the loneliness which is so often a part of an aging parent's life. Id. at 632.**

## KENTUCKY ADOPTIONS OPPORTUNITY PROJECT

Adoption and Safe Families Act (ASFA), signed into law November 1997 (P.L. 105-89), contains important changes to federal family support law that directly affect family support programs and state planning for family support. Intended to promote safety and an environment of permanence for children, the Act reauthorizes the Family Preservation and Support Services Program (FPSSP) passed under the 1993 Omnibus Budget Reconciliation Act.

Kentucky responded to ASFA by passing House Bill 142, essentially endorsing the items specified in ASFA and declaring these activities both law and best practice for practitioners in the Commonwealth of Kentucky who work in the area of child abuse, neglect, and/or dependency.

In addition to recognizing and endorsing the provisions of ASFA, Kentucky was allowed one of only five grants issued by the federal government to study the impact of ASFA on the legal and social service delivery system—now known as The Kentucky Adoptions Opportunity Project.

The study area includes Knox, Laurel, and Jefferson Counties. These areas are being observed for best practice, using the provisions of ASFA and HB 142 as a guide, both from a social service and legal perspective. It is hoped that, when the grant award ends in 2001, we will have accumulated valuable information in the best methods of serving at-risk children and their families. It is now the mission of the grant to help identify the weaknesses in our current system and address these weaknesses in a manner that will result in better service delivery to our children and their families. This may include providing funds for pilot project services, holding training and cross professional conferences, and being a guide to the new laws that dictate current methods of practice. The Kentucky Adoptions Opportunity Project hopes to become a resource to those in the commonwealth who endeavor to serve children and families, both as a guide and a resource. We welcome your input and suggestions.

Coordinator, Kentucky Adoptions Opportunity Project, 100 Millcreek Park, Frankfort, Kentucky 40601.

### ***Something to think about....***

Here are a few comments that describe reactions from children overhearing inappropriate remarks concerning child support.

*“My dad rents me once a week.”*

*“My mom took all my dad's money and now he can't afford to see me.”*

*“Why is my friend Billy worth more than me?”*

From Child support brochure available from  
The Association Of Family and Conciliation Courts (1989)